IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

MFA.No. 176 of 2002()

OPMV.174/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR

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APPELLANT: RESPONDENTS 1 & 2 IN OP (MV).

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1. K.ELESWA, AGED 64 YEARS,
   W/O. MUKUNDAN, KALAPPURAKKAL HOUSE,
   HOUSE NO.23/198, KADEBHAGAM, PALLURUTHY, KOCHI-6.

2. SUDHISH K.H., S/O. HARIDAS,
   KARIKKASSERY, CHITTATTUKARA, NORTH PARAVUR.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS/3RD RESPONDENT IN OP (MV)

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1. THE ORIENTAL INSURANCE CO.LTD.,
   MTPC OFFICE, OPP.CITY HOSPITAL, M.G.ROAD,
   KOCHI-35.

2. DONY ANTONY, D/O. ANTONY,
   KURISINKAL HOUSE, S.D.P.Y. ROAD, PALLURUTHY,
   COCHIN-6.

BY ADV. P.V. JYOTHI PRASAD FOR R1
SRI.C.K.ABDUL RAHIM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, ALONG WITH MFA NO. 724 OF 2002 OP NO. 37509 OF 2001 OP NO. 37503 OF 2001 OP NO. 37508 OF 2001 OP NO. 37489 OF 2001 OP NO. 37488 OF 2001 OP NO. 37487 OF 2001 OP NO. 37517 OF 2001 & OP NO. 37459 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.M.P. NO.878 OF 2002
IN
M.F.A. NO.176 OF 2002

DISMISSED.

Sd/-
K.PADMANABHAN NAIR,JUDGE.

/TRUE COPY/

P.A. TO JUDGE

K. PADMANABHAN NAIR, J.

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M.F.A. Nos. 176 & 724 of 2002

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O.P. Nos.37503, 37517,37487,37508,37509,
37488,37489 & 37459 of 2001

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Dated this the 12th day of March, 2007

J U D G M E N T

The owner and driver of a tempo traveller bearing Registration No. KL-7/F-4858 are the appellants in M.F.As 176/2002 and 724/2002. They have filed O.P Nos. 37503/2001, 37517/2001,37487/2001,37509/2001, 37508/2001, 37489/2001, 37488/2001 and 37459/2001 also. Miscellaneous First Appeals and Original Petitions are filed challenging a common award passed by the Motor Accidents Claims Tribunal, North Paravur in O.P (MV) Nos.172/98, 173/98, 174/98, 175/98, 176/98, 177/98, 178/98, 179/98, 180/98 and 181/98. The value of the subject matter in each of the Original Petitions is less than Rs.10,000/-. For the sake of convenience the parties are referred to as claimants, owner, driver and insurer in these proceedings.

2. The vehicle bearing Reg.No.KL7F-4858 was returning from Ootty during the early hours of 29-10-1997.

When it reached near Angamali bridge an accident took place. The vehicle capsized and fell of the road. The passengaer travelling in the vehicle sustained injuries.

3. The persons who sustained injuries filed Original Petitions claiming compensation alleging that the accident occurred due to the rash or negligent driving of the vehicle by its driver. The main contention raised by the owner and driver was that it was an inevitable accident. It was contended that the road was slippery on account of rain and when the driver applied brake the vehicle lost its control and went of the road. The insurer contended that the 2nd respondent driver was not possessed of a vallid driving licence and badge as on the date of accident. It was contended that he was authorised to drive only a light motor vehicle and hence the insurer was not liable to pay the compensation. The Tribunal found that the accident occurred due to the negligence of the driver. The Tribunal fixed various amounts of compensation to the petitioners in different petitions. It is also found that Ext. B1 - driving licence does not authorise the driver to drive light transport vehicle as on the date of accident and hence the insurer shall deposit the compensation awarded and can recover those amounts from the owner. So the owner and driver have filed

the two Miscellaneous First appeals and writ petitions challenging the common award on four grounds. (1) There was no negligence on the part of the driver. (2) The accident occurred was an inevitable one (3) The compensation awarded to various persons is excessive & (4)The Insurer should have been directed to pay compensation awarded in all these cases.

4. It was argued that the 2nd respondent was competent to drive light transport vehicles on the date of accident and as such the insurer ought to have been directed to pay the entire compensation in all those persons.

5. Sri.P.V. Jyothi Prasad, the learned counsel for the insurer has argued that the accident occurred in the early hours of 29-10-1997 and Tribunal after appreciating the material on record found that the accident occurred due to the negligence of the driver. It is also contended that the Tribunal had given valid and cogent reasons for allowing the insurer to recover the amount from the owner. The driver who was driving the vehicle was issued with driving licence in the year 1991. It is argued that the endorsement made on the driving licence makes it clear that the petitioner obtained a badge to drive a transport vehicle only in the year 1997. It is also argued that the person who is in possession of a badge for

driving light motor vehicle is not entitled to drive light transport vehicle. It is argued that for driving a light transport vehicle a separate badge is necessary and Ext. B1 will show that such a badge was obtained only on 18.11.1997.

6. It was not a case of collision. The accident occurred at about 1.30 a.m. in the morning of 29.10.1997. The owner and driver have no case that any other vehicle came from opposite direction and driver had to apply brake suddenly and the accident occurred due to the slippery condition of the road.

7. As rightly noted by the Tribunal, if the road was slippery the driver ought to have been more careful. The material on record shows that accident occurred due to the negligence of the driver. So I do not find any ground to interfere with the finding of the Tribunal that the accident occurred due to the negligence of the driver of the tempo. I confirm the same.

8. The learned counsel appearing for the owner and driver (appellants in M.F.As and petitioners in the Original Petitions) has contended that the quantum awarded in all cases is highly excessive. The tribunal had awarded more than Rs. 10,000/- only in two cases. In other cases, the amount awarded is below Rs. 10,000/-. I have carefully gone through the

records.

9. The petitioner in O.P. (MV) No.172/98 suffered cerebral concussion bogginess over the (L) paraital area, tenderness over lumber and cervical spine. She was awarded an amount of Rs.10,850/- as compensation.

10. The petitioner in O.P. (MV) 173/98 sustained the following injuries (1) Tenderness over the (L) chest and scapular area, swelling over (L) cheek and blunt thoracic trauma. He was awarded an amount of Rs. 6,660/- as compensation.

11. The petitioner in O.P. (MV) 174/98 sustained lacerated wound on the (L) frontal area extending to the eye brow and the (L) eyelid and cerebral concussion. He was awarded an amount of Rs. 11,800/- as compensation.

12. The petitioner in O.P. (MV) 175/98 sustained tenderness over the (L) clavicle, left shoulder, scapuler area pain over the muscle and (L) shoulder. He was awarded an amount of Rs. 5,025/- as compensation.

13. The petitioner in O.P. (MV) 176/98 sustained injuries over the (R) and (L) chest area both shoulders, the cervical spine and lumber spine. He was awarded an amount of Rs. 7,440/- as compensation.

14. The petitioner in O.P. (MV) 177/98 sustained the following injuries (1) Lacerated wound on the (R) frontal area extending to the eye brow and had cerebral concussion. She was awarded an amount of Rs. 9,750/- as compensation.

15. The petitioner in O.P. (MV) 178/98 suffered a lacerated wound over the (R) occipital region and cerebral concussion. There was sub conjunctival hemorrhage in the left eye. He was awarded an amount of Rs. 8,700/- as compensation.

16. The petitioner in O.P (MV) 179/98 sustained the following injuries. (1) Swelling of the anterior aspect of the left leg and tenderness (2) Swelling and tenderness on the (L) shoulder. (3) Concussion the left leg and (L) ankle. He was awarded an amount of Rs. 5,160/- as compensation.

17. The petitioner in O.P. (MV) 180/98 sustained the following injuries (1) tenderness over the right hipjoint and leg and (2) lacerated wound on the left foot. She was awarded an amount of Rs.7000/- as compensation.

18. The petitioner in O.P. 181/98 sustained the following injuries. (1) Abrasion over the ankle of (L) eye concussion on the left side of face and abrasion on the left foot. She was awarded an amount of Rs.4,713/- as compensation.

19. Considering the nature of injuries sustained by the petitioners in each petitions and duration of treatment they underwent it is not possible to hold that compensation awarded in these cases was excessive. I do not find any reason to interfere with the the quantum of compensation awarded in any of these cases. The quantum of compensation awarded in each case is also confirmed.

20. Now I shall consider the contention that the driver of the tempo was possessed of valid driving licence and badge. There is no dispute regarding the fact that the driver of the vehicle was holding a driving licence. But that fact alone is not sufficient to direct the insurer to pay compensation. The specific contention raised by the insurer was that the driver was not holding a valid badge. It is trite law that a person who drives a light transport vehicle must be in possession of a valid driving licence and also a badge. If the driver of transport vehicle is not in possession of driving licence and badge, the insurer is exonerated from liability. In these cases, the driving licence was obtained on 20.10.1991. There was an endorsement in the driving licence that the driver was given badge to drive autorickshaws. The oral evidence of RW2 the Regional Transport Officer shows that from the date of driving licence

itself, a person is issued badge for driving autorickshaws. The licence to drive light motor vehicle will be issued only as and when the driver completes one year's experience. So with effect from 25.1.1991, the 2nd respondent was entitled to drive light motor vehicle. But there is a distinction between light motor vehicle and light transport vehicle. The vehicle involved in this case is a light transport vehicle. There is absolutely no material on record to show that the 2nd respondent was in possession of such a badge on the date of accident. The Tribunal after considering the oral and documentary evidence in detail had found that the insurer shall pay various amounts awarded as compensation and then recover the amounts from the owner. That is a finding of fact based on evidence. So I do not find any reason to interfere with the awards passed in these cases.

21. It is true that insurer is given right to recover the amount from the owner after satisfying the awards. But the insurer shall consider whether it shall recover the amounts from the owner in this particular case. The vehicle was purchased by the husband of the appellant spending his retirement benefits. He died. The appellant is a person stated to be suffering from a number of diseases and facing

acute financial problems. It is open to the appellant to approach the insurer and file petition explaining the circumstances. If such a petition is filed , the insurer shall consider the same and take a decision as to whether the amounts due from the owner can be written off.

In the result, M.F.As and O.Ps are dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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P.A to Judge

K. PADMANABHAN NAIR, J.

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M.F.A. Nos. 176 & 724 of 2002
&
O.P. Nos.37503, 37517,
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J U D G M E N T

12th MARCH, 2007

K.
PADMANABHAN NAIR, J.

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Dated this the 12th day of
March, 2007